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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re ROBERT W., A Person Coming
Under the Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

ELIZABETH C.,

Defendant and Appellant.

B267659

Los Angeles County
Super. Ct. No. CK64496

APPEAL from an order of the Superior Court of Los Angeles County,
Steff Padilla, Juvenile Court Referee. Affirmed.

Jennifer L. King, under appointment by the Court of Appeal, for Defendant and
Appellant.

Office of the County Counsel, Mary C. Wickham, County Counsel,
R. Keith Davis, Assistant County Counsel, and Kirstin J. Andreasen, Deputy County
Counsel, for Plaintiff and Respondent.

INTRODUCTION

Elizabeth C. (mother) appeals from the juvenile court's disposition order declaring her son Robert W. a dependent of the court under Welfare and Institutions Code¹ section 300, subdivision (b), removing him from her custody under section 361, subdivision (c)(1), and providing family reunification services under section 361.5. Mother contends the portion of the reunification order requiring her to submit to random, on-demand drug testing and to attend a full drug rehabilitation program in the event of any missed or positive test was not designed to eliminate the problems that led to Robert's removal or to facilitate the family's reunification. Finding no abuse of discretion, we affirm.²

FACTUAL AND PROCEDURAL BACKGROUND

When her son Robert was born on October 9, 2009, mother had a six-year history of substance abuse and related child-welfare involvements. Robert's older sister was removed from mother's custody in 2006 and mother has failed to reunify with her. Mother's criminal record also reflects her struggles with substance abuse. In 2004, she pled guilty to driving under the influence, a misdemeanor; she was placed on summary probation. After successfully completing probation, the conviction was set aside in 2011. In 2008, mother was detained on suspicion of public intoxication but was not cited or arrested.

In May 2014, the Los Angeles Department of Children and Family Services (Department) received a referral alleging Robert was the victim of emotional abuse after mother slapped father in Robert's presence. After mother reported to the Department that Robert was being bullied at school, a second referral in August 2014 questioned mother's explanation of Robert's bruises. Following an investigation, the Department

¹ All undesignated statutory references are to the Welfare and Institutions Code.

² Robert's father, Robert W. Sr. (father), is not a party to this appeal.

became concerned about mother's mental health, disciplinary methods, and prior domestic violence.

On September 25, 2014, the Department filed a petition under section 300, alleging under subdivision (a) that mother and father had a history of engaging in violent altercations in Robert's presence (count 1-a), and alleging under subdivision (b) that mother's untreated bipolar disorder rendered her unable to provide regular care for Robert (count b-1), that mother had a history of substance abuse and cared for Robert while under the influence of marijuana (count b-2), and that mother and father engaged in domestic violence (count b-3). Robert was not detained at that time. In support of the drug allegation, the Department noted mother's current marijuana use, earlier problems with alcohol and methamphetamine, and the results of two voluntary drug tests. The first test, taken July 25, 2014, was positive for cannabinoids.³ The second test, taken August 25, 2014, was negative. An addendum report, prepared several days later, asked the court to order mother to submit to random drug testing.

On September 29, 2014, the juvenile court concluded the Department had made the prima facie showing required under section 300 and placed Robert in mother's custody. The court ordered mental health assessments of Robert and mother, and ordered mother to submit to random drug testing.

On November 14, 2014, the Department filed a jurisdiction report indicating that although the family was at a high risk of future abuse and neglect, family-maintenance services and supervision would mitigate the risk. A supplemental report filed January 16, 2015 reached the same conclusion. In response, the court ordered mother to submit to weekly, random drug tests and ordered the Department to prepare another supplemental report addressing the results of the tests and the status of mother's mental health counseling.

³ "Cannabinoids are compounds containing tetrahydrocannabinol (THC). THC is the psychoactive ingredient in marijuana." (*In re Johnny O.* (2003) 107 Cal.App.4th 888, 890.)

The Department submitted the information requested by the court sometime before the next hearing, which was scheduled to take place on March 25, 2015. Test results revealed four negative drug tests and two missed tests—but also revealed two positive tests for cannabinoids on March 9 and March 20, 2015. Then, on March 23, 2015, Robert fell and hurt his arm while he was at the park with his grandmother. Father, a trained EMT, examined the arm and advised Robert’s grandmother to wait 24 hours to see if the swelling subsided before seeking medical attention. Mother also initially treated the injury as a sprain—but when she took Robert to the hospital two days after the injury, doctors diagnosed a radial fracture.

On March 25, 2015, the Department made its first request for removal, and the court detained Robert without a removal order or request for detention based on what it concluded were exceptional circumstances. The court ordered mother to undergo a second mental health evaluation and ordered the Department to provide monitored visitation. Mother expressed dissatisfaction with her appointed attorney, and the following day, the court appointed new counsel to represent her. Shortly thereafter, mother’s next two drug tests—on March 27 and April 18, 2015—were both positive for cannabinoids.

On April 20, 2015, the court again ordered mother to undergo individual counseling and a psychological examination under Evidence Code section 730.⁴ In its appointment order, the court asked the psychologist to conduct “[p]sychological testing of mother” to determine “current mental health diagnosis, if any, and whether it impacts parenting ability in any way.” The court noted, “Mother has previously been diagnosed with bi-polar [sic] disorder (per mother) and is not currently taking any psychotropic medications. Court needs more current evaluation of mother’s mental health needs for

⁴ At the earlier March 25, 2015 hearing, the court ordered an Evidence Code section 730 evaluation and ordered the Department’s attorney to submit the necessary paperwork. The court repeated the order at the April 20, 2015 hearing. However, the order appointing an expert to conduct the evaluation was not signed until April 23, 2015.

reunification plan.” The court did not instruct the psychologist to address the “[e]xtent of parent’s substance/alcohol abuse and its effect on the minor(s).” A responsive report was filed on June 1, 2015.

The court began jurisdiction proceedings on June 9, 2015.⁵ Since the last hearing, mother had two positive drug tests—one for cannabinoids and one for Hydrocodone, two negative tests, and one missed test. As relevant to the issue before us, mother testified that she had abused methamphetamine within the last 14 years, most recently in 2006. She had not used marijuana for 60 days because she did not want to jeopardize reunification with Robert, but before that, mother had been using marijuana for approximately six months. Mother did not believe she had a marijuana addiction. She did not use marijuana in Robert’s presence and did not believe her marijuana use impacted her ability to parent him properly.

At the close of proceedings, the court struck from the section 300 petition the allegations in counts a-1 (violent conduct) and b-2 (substance abuse); the court amended and sustained counts b-1 and b-3. The court amended count b-1 to change the allegation of “mental and emotional problems” to an allegation that mother had a “mental health diagnosis of Bipolar Disorder, which is currently untreated and periodically renders the mother unable to provide regular care for the child.” The court emphasized that that any risk to Robert was limited to mother’s *untreated* mental illness rather than mental illness generally. The court amended count b-3 to clarify that while mother and father’s altercations were “physical and verbal[,]” they were not violent—and to that end, the court replaced the word “strike” with “slapped.” Finally, the court amended both counts to emphasize that Robert faced a less serious risk of harm than the Department had alleged.

⁵ On April 20, 2015, mother had waived her right to a contested hearing and submitted the petition on the basis of the Department’s reports. However, because father sought a contested hearing, the court did not make any jurisdiction or disposition findings. On May 18, 2015, the court granted mother’s motion to withdraw her submission and proceed to a contested hearing.

The court held a contested disposition hearing on August 20, 2015. Since her last court appearance, mother had three negative drug tests. The court had also reviewed the Evidence Code section 730 evaluation in the interim. Using DSM-5 criteria, the court-appointed psychologist had diagnosed mother with bipolar disorder, alcohol use disorder (moderate), and cannabis use disorder (severe). (See Diagnostic and Statistical Manual of Mental Disorders: DSM-5 (5th ed. 2013) Substance-Related and Addictive Disorders, p. 509-519.) Noting that mother had successful mental-health treatment outcomes in the past, the evaluator found it likely that treatment would again alleviate her symptoms—or at least manage them to the point where they would not affect her parenting ability. In light of this report, the other reports admitted into evidence, its own observations, and the arguments of counsel, at the close of the hearing, the court declared Robert a dependent of the court; the court found by clear and convincing evidence that Robert would face substantial danger if he returned home and that there were no reasonable means to protect him short of removal. The court ordered family reunification services, including parenting and co-parenting classes, individual counseling, monitored visits for mother, and the challenged drug testing.

Mother filed a timely notice of appeal.

DISCUSSION

On appeal, mother challenges the portion of the court's disposition order requiring her to submit to random, on-demand drug testing—and in the event of a missed or positive test, to attend an intensive drug rehabilitation program. She contends the order exceeded the court's discretion because her drug use was not one of the problems that led to Robert's removal. Mother does not otherwise challenge the jurisdiction order, the declaration of dependency, or the disposition order. The

Department contends the order was an appropriate exercise of the court's discretion because it was designed to address the problems that led to Robert's removal.⁶

1. Authority to Order Substance Abuse Testing and Treatment

"The overarching goal of dependency proceedings is to safeguard the welfare of California's children. [Citation.] 'Family preservation, with the attendant reunification plan and reunification services, is the first priority when child dependency proceedings are commenced. [Citation.] Reunification services implement "the law's strong preference for maintaining the family relationships if at all possible." [Citation.]' "

(*In re Nolan W.* (2009) 45 Cal.4th 1217, 1228 (*Nolan*).) "The legislative scheme reflects this reunification goal. With some limited exceptions not relevant here, section 361.5 requires the juvenile court to order child welfare services for both parent and child when a minor is removed from parental custody. Unless an exception applies, 'whenever a child is removed from a parent's or guardian's custody, the juvenile court shall order the social worker to provide child welfare services to the child and the child's mother and statutorily presumed father or guardians.' (§ 361.5, subd. (a); see *Tonya M. v. Superior Court* (2007) 42 Cal.4th 836, 845 [parent's receipt of services is presumed at the outset of dependency proceedings].)" (*Ibid.*) "It is difficult, if not impossible, to exaggerate the importance of reunification in the dependency system." (*In re Luke L.* (1996) 44 Cal.App.4th 670, 678.) Accordingly, the court has broad discretion to craft a reunification plan that is " 'appropriate for each family and . . . based on the unique facts relating to that family.' " (*In re Dino E.* (1992) 6 Cal.App.4th 1768, 1777.)

"Of course, the juvenile court's discretion in fashioning reunification orders is not unfettered." (*Nolan, supra*, 45 Cal.4th at p. 1229.) Every reunification order must be "reasonable" and "designed to eliminate those conditions that led to the court's

⁶ Because we conclude the court did not abuse its discretion, we do not address the Department's additional contention that mother forfeited this argument by failing to object with sufficient specificity.

finding that the child is a person described by Section 300.” (§ 362, subd. (d).) Thus, in *In re Basilio T.*, the court reversed a dispositional order requiring substance abuse counseling because there was no evidence to suggest either parent had a substance abuse problem. (*In re Basilio T.* (1992) 4 Cal.App.4th 155, 172–173; see also *In re Sergio C.* (1999) 70 Cal.App.4th 957, 960 [reversing order for random drug tests where only evidence of drug use was “the unsworn and uncorroborated allegation of an admitted drug addict who has abandoned her children.”].) On the other hand, a reunification order requiring a father to submit to random drug and alcohol testing was appropriate where “the child was a high-risk infant with ongoing medical problems, requiring a stable, sober caregiver[,]” no other adult relatives lived in the home, and the father had a history of excessive alcohol and drug use. (*In re Christopher H.* (1996) 50 Cal.App.4th 1001, 1006–1008.)

2. The Drug Testing Order was Appropriate

As discussed, the juvenile court has wide latitude to fashion disposition orders to remediate the problems that led to a child’s removal. (*In re Drake M.* (2012) 211 Cal.App.4th 754, 770 (*Drake*).) “Unfortunately, in a great many dependency cases, parental substance abuse is one such problem.” (*Nolan, supra*, 45 Cal.4th at p. 1229.) Thus, the “juvenile court has authority to require a parent to submit to substance abuse treatment as part of a reunification plan” as long as the requirement is “designed to address a problem that prevents the child’s safe return to parental custody.” (*Ibid.*; see § 362, subd. (d).) “We cannot reverse the court’s determination in this regard absent a clear abuse of discretion.” (*Drake, supra*, at p. 770.) Accordingly, our task here is to review the evidence to determine whether it supports the trial court’s implied finding that drug testing and treatment were necessary to address either mother’s bipolar disorder or her physical and verbal altercations with father. (See *ibid.*)

In *Drake*, we set forth two grounds upon which a court may properly rest a finding of substance abuse—a medical diagnosis or evidence sufficient to meet the definition of substance abuse laid out in the current version of the DSM. (*Drake, supra*, 221 Cal.App.4th at p. 766.) While these are not the only ways to establish substance

abuse, they are generally useful and workable definitions. (See *In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1218.) Here, the psychologist appointed by the court concluded mother suffered from “Alcohol Use Disorder, Moderate” and “Cannabis Use Disorder, Severe” as those terms are defined in the DSM-5. Accordingly, under the test in *Drake*, there was sufficient evidence for the court to conclude mother suffered from a current substance-abuse problem. (*Drake, supra*, at p. 770.)

We acknowledge mother’s statements that she used marijuana to treat back pain in accordance with the Compassionate Use Act.⁷ We also acknowledge that mother’s cannabinoid concentrations dropped significantly with each drug test, indicating she was taking steps to address the Department’s and the court’s concerns about her marijuana use. However, despite being given opportunities to do so, mother did not produce a copy of her medical-marijuana prescription. Using marijuana and opiates without the recommendation of a physician—even for a medical reason—is illegal behavior that further “supports a finding of a history of substance abuse.” (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 451.)

To be sure, drug use alone is insufficient to support a drug-testing order unless the order is “designed to eliminate those conditions that led to the court’s finding that the child is a person described by Section 300.” (§ 362, subd. (d); see *In re Rebecca C.* (2014) 228 Cal.App.4th 720, 728.) Here, there was sufficient evidence to support the court’s conclusion that drug testing was necessary. Mother tested positive for cannabinoids on March 20, 2015. Robert broke his arm on March 23, 2015—but mother did not seek medical treatment until March 25, 2015. Though this incident sparked the Department’s first request for removal, mother’s next two drug tests—on March 27 and April 18, 2015—were also positive for cannabinoids. Mother’s prior history of drug addiction, her diagnosed cannabis addiction, and her current, illegal drug

⁷ The Compassionate Use Act expressly states that one of its purposes is “[t]o ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to . . . sanction.” (Health & Saf. Code, § 11362.5, subdivision (b)(1)(B).)

use supported an inference that mother's marijuana consumption contributed to her failure to seek prompt medical treatment for Robert's broken arm and presented an obstacle to reunification. We therefore conclude the drug testing order was not an abuse of discretion.

DISPOSITION

The disposition order is affirmed.

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LAVIN, J.

WE CONCUR:

EDMON, P. J.

HOGUE, J.^{*}

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.